

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18701. Public Official, Definitions.

(a) For purposes of Government Code section 82048, which defines "public official," and Government Code section 82019, which defines "designated employee," the following definitions apply:

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of committees, boards or commissions with decisionmaking authority.

(A) A committee, board or commission possesses decisionmaking authority whenever:

(i) It may make a final governmental decision;

(ii) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or

(iii) It makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

(B) A committee, board, or commission does not possess decisionmaking authority under subsection (a)(1)(A)(i) of this regulation if it is formed for the sole purpose of researching a topic and preparing a report or recommendation for submission to another governmental body that has final decisionmaking authority.

(2) "Consultant" means an individual who, pursuant to a contract with a state or local government agency:

(A) Makes a governmental decision whether to:

- (i) Approve a rate, rule, or regulation;
- (ii) Adopt or enforce a law;
- (iii) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
- (iv) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;
- (v) Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;
- (vi) Grant agency approval to a plan, design, report, study, or similar item;
- (vii) Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(B) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in regulation 18702.2 or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code under Government Code section 87302.

(b) For purposes of Government Code section 87200, the following definitions apply:

(1) "Other public officials who manage public investments" means:

(A) Members of boards and commissions, including pension and retirement boards or commissions, or of committees thereof, who exercise responsibility for the management of public investments;

(B) High-level officers and employees of public agencies who exercise primary responsibility for the management of public investments, such as chief or principal investment

officers or chief financial managers. This category shall not include officers and employees who work under the supervision of the chief or principal investment officers or the chief financial managers; and

(C) Individuals who, pursuant to a contract with a state or local government agency, perform the same or substantially all the same functions that would otherwise be performed by the public officials described in subdivision (b)(1)(B) above.

(2) "Public investments" means the investment of public moneys in real estate, securities, or other economic interests for the production of revenue or other financial return.

(3) "Public moneys" means all moneys belonging to, received by, or held by, the state, or any city, county, town, district, or public agency therein, or by an officer thereof acting in his or her official capacity, and includes the proceeds of all bonds and other evidences of indebtedness, trust funds held by public pension and retirement systems, deferred compensation funds held for investment by public agencies, and public moneys held by a financial institution under a trust indenture to which a public agency is a party.

(4) "Management of public investments" means the following nonministerial functions: directing the investment of public moneys; formulating or approving investment policies; approving or establishing guidelines for asset allocations; or approving investment transactions.

Comment: In limited circumstances, the members of a nonprofit organization may be "public officials." (*In re Siegel* (1977) 3 FPPC Ops. 62.)

Note: Authority cited: Section 83112, Government Code. Reference: Sections 82019, 82048, 87100, 87200 and 87302, Government Code.

HISTORY

1. New section filed 1-22-76; effective thirtieth day thereafter (Register 76, No. 4).
2. Amendment of subsection (c) filed 4-28-82; effective thirtieth day thereafter (Register 82, No. 18).
3. Amendment of subsection (b) filed 10-19-89; operative 11-18-89 (Register 89, No. 42).
4. Repealer and new section filed 11-23-98; operative 11-23-98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
5. Editorial correction of 4 (Register 2000, No. 25).
6. Amendment of section heading, section and Note filed 1-11-2001; operative 2-1-2001.
Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 2).
7. Amendment filed 12-29-2005; operative 1-28-2006. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992. (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements.) (Register 2005, No. 52).